

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN DUANE WOODS,

Defendant-Appellant.

UNPUBLISHED

April 19, 2012

No. 303495

Kalamazoo Circuit Court

LC No. 2010-001480-FH

Before: METER, P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Defendant Stephen Duane Woods appeals as of right his convictions for resisting or obstructing a police officer causing bodily injury requiring medical attention, MCL 750.81d(2), and resisting or obstructing a public officer performing his duties, MCL 750.479(2). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to 2 to 15 years' imprisonment for each offense. We affirm.

On appeal, defendant argues the trial court abused its discretion by excluding evidence suggesting that there was an ongoing investigation into the possible misconduct of Department of Corrections employees arising from defendant's apprehension. We disagree. We note that defendant has failed to preserve his argument for appeal because he now presents a substantially different purpose supporting the introduction of the evidence than the purpose he offered to the trial court. *People v Hackett*, 421 Mich 338, 352; 365 NW2d 120 (1984); *People v McPherson*, 263 Mich App 124, 137; 687 NW2d 370 (2004). On appeal, he argues for the first time that the evidence will establish the bias of witnesses. Evidentiary issues are nonconstitutional, *People v Blackmon*, 280 Mich App 253, 259; 761 NW2d 172 (2008), and unpreserved issues are reviewed for plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Turning to defendant's argument, all logically relevant evidence is admissible, unless otherwise prohibited. MRE 402; *Lewis v LeGrow*, 258 Mich App 175, 199; 670 NW2d 675 (2003). Relevant evidence is that which has any tendency to make a fact of consequence more or less likely. MRE 401; *People v Schaw*, 288 Mich App 231, 236-237; 791 NW2d 743 (2010). Generally, inquiry into a witness's credibility and bias is always relevant. *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005); *People v Layher*, 464 Mich 756, 764; 631 NW2d 281 (2001). However, in the present case, we conclude defendant's offer of proof relating to the

investigation was insufficient to support the conclusion that the evidence was relevant to witness bias. A party seeking admission of excluded evidence must make an offer of proof before the trial court. MRE 103(a)(2). In this case, from defendant's sparse offer of proof to the trial court, none of the circumstances surrounding the investigation can be discerned. At the time of trial, it was not clear if the investigation was completed, who specifically was being investigated, when the investigation was begun, or who initiated the investigation. Without further details, we cannot conclude the investigation was relevant.

Next, on appeal, defendant challenges the scoring of offense variable (OV) 9 and OV 13. "This Court reviews a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). Scoring decisions supported by "any evidence" will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). With regard to OV 9, we conclude the trial court did not abuse its discretion in scoring OV 9 at ten points. Ten points is appropriate when "[t]here were 2 to 9 victims placed in danger of physical injury or death . . ." MCL 777.39(c). In scoring OV 9, "only conduct that relates to the offense being scored may be considered," *People v Sargent*, 481 Mich 346, 350; 750 NW2d 161 (2008), and courts may not consider the "entire criminal transaction" or use "conduct after the crime was completed as the basis for scoring OV 9," *People v McGraw*, 484 Mich 120, 133; 771 NW2d 655 (2009). While only conduct relating to the scoring offense may be considered, it is not necessary that a separate offense occur in relation to each victim. *Sargent*, 481 Mich at 350 n 2. Rather, those present at the scene of a crime may be victims placed in danger by defendant's actions. *People v Morson*, 471 Mich 248, 261-261; 685 NW2d 203 (2004); *People v Kimble*, 252 Mich App 269, 274; 651 NW2d 798 (2002).

In the present case, defendant attempts to argue that because the scoring offense involves resisting or obstructing a police officer causing bodily injury, MCL 750.81d(2), only defendant's conduct at the exact moment he caused injury can be used in the scoring of OV 9. We find defendant's argument unpersuasive because he attempts to narrow the offense down to the specific moment when he actually bit Trooper Ambris, and his argument assumes his teeth were the only weapon at his disposal. In actuality, defendant's resistance was ongoing conduct, beginning when he was handcuffed in the apartment. See *People v Mann*, 287 Mich App 283, 286-297; 786 NW2d 876 (2010) (concluding OV 9 may be scored for individuals placed in danger during the "course" of a crime). His resistance within the meaning of MCL 750.81d(2) did not begin and end with biting Trooper Ambris. It began in the apartment when he struggled against being handcuffed, and it continued down the stairs as he elbowed Investigator Hatfield in the face. Analogously to *Morson* and *Kimble*, while defendant's conduct ultimately injured Trooper Ambris, his actions could have injured any of the officers in his vicinity while he struggled and resisted arrest. We also find it inapposite to argue that because defendant's teeth were occupied biting Trooper Ambris, he could not have placed anyone else in danger of injury. During the course of the same incident, defendant struggled with at least two officers, using his teeth and other body parts. Accordingly, the trial court properly scored OV 9 at ten points.

Having decided OV 9 was properly scored, we find it unnecessary to consider the trial court's scoring of OV 13. Even supposing some error by the trial court, defendant's recommended minimum sentence range under the legislative guidelines would have been unaffected. Specifically, the trial court scored defendant's higher offense, resisting or

obstructing a police officer causing injury, a Class F felony, MCL 777.16d. Under MCL 777.67, using defendant's prior record variable (PRV) score of 70 and his OV score of 60, a range of 12 to 24 months was appropriate. Taking into account defendant's status as a fourth habitual offender, MCL 769.12, the trial court increased the upper limit of the recommended minimum sentence range by 100 percent for a final guideline range of 12 to 48 months. MCL 777.21(3)(c). Even assuming the trial court improperly scored OV 13 at 25 and scoring it at zero, defendant's OV score would be 35, and his recommended sentence would be unchanged. MCL 777.67; MCL 777.21(3)(c). Accordingly, because the guidelines range is not altered, resentencing is not required. *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006); *People v Davis*, 468 Mich 77, 83; 658 NW2d 800 (2003).

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens